

By: Kolkhorst

H.B. No. 3201

A BILL TO BE ENTITLED

AN ACT

relating to the practice of dentistry.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 254.004, Occupations Code, is amended to  
by adding subsections (c) and (d) read as follows:

(c) The board shall collect an additional \$80 surcharge for  
each of the following fees:

(1) first registration permit; and

(2) renewal of a registration permit.

(d) The board shall deposit each surcharge collected to the  
credit of the public assurance account. The public assurance  
account is an account in the general revenue fund that shall be  
appropriated only to the board to pay for the board's enforcement  
program, including the expert dentist panel.

SECTION 2. Section 254.006, Occupations Code, is amended to  
read as follows:

(b) Investigation files and other records are confidential.  
~~and shall be divulged only to the persons investigated at the  
completion of the investigation.~~ Notwithstanding this provision  
tThe board:

(1) must provide notice under section 263.0076; and

(2) may share investigation files and other records  
with another state regulatory agency or a local, state, or federal  
law enforcement agency.

1 SECTION 3. Subtitle D, Chapter 254, Occupations Code, is  
2 amended by adding Section 254.019 to read as follows:

3 Section 254.019 DELEGATION OF CERTAIN ACTIONS

4 (a) The board may delegate authority to board employees to  
5 issue licenses under this subtitle to applicants who clearly meet  
6 all licensing requirements. If the board employees determine that  
7 the applicant does not clearly meet all licensing requirements, the  
8 application shall be returned to the board. A license issued under  
9 this subsection does not require formal board approval.

10 (b) The board may delegate to a committee of board employees  
11 the authority to dismiss or enter into an agreed settlement of a  
12 complaint that does not relate directly to patient care or that  
13 involves only administrative violations. The disposition  
14 determined by the committee must be approved by the board at a  
15 public meeting. A complaint delegated under this section shall be  
16 referred for informal proceedings under Section 263.0075 if:

17 (1) the committee of employees determines that the  
18 complaint should not be dismissed or settled;

19 (2) the committee is unable to reach an agreed  
20 settlement; or

21 (3) the affected licensee requests that the complaint  
22 be referred for informal proceedings.

23 SECTION 4. Section 255.006, Occupations Code, is amended by  
24 amending Subsections (a) and (d-1) to read as follows:

25 (a) A complaint received under this chapter must be filed  
26 with and reviewed by the board to determine jurisdiction. If the  
27 board has jurisdiction, ~~the board shall investigate the complaint~~

1 ~~to determine the facts concerning the complaint.~~ the board shall  
2 complete a preliminary investigation of the complaint not later  
3 than the 45th day after the date of receiving the complaint. The  
4 board shall first determine whether the licensee constitutes a  
5 continuing threat to the public welfare. On completion of the  
6 preliminary investigation, the board shall determine whether to  
7 officially proceed on the complaint. If the board fails to complete  
8 the preliminary investigation in the time required by this  
9 subsection, the board's official investigation of the complaint is  
10 considered to commence on that date.

11 (b) The board may not consider a complaint that is filed  
12 with the board after the fourth anniversary of the date:

13 (1) the act that is the basis of the complaint  
14 occurred; or

15 (2) the complainant discovered, or in the exercise of  
16 reasonable diligence should have discovered, the occurrence of the  
17 act that is the basis of the complaint.

18 (c) The board by rule shall:

19 (1) adopt a form to standardize information concerning  
20 complaints filed with the board; and

21 (2) prescribe information to be provided to a person  
22 when the person files a complaint with the board.

23 (d) The board shall adopt rules concerning the  
24 investigation of a complaint filed with the board. The rules  
25 adopted under this subsection must:

26 (1) distinguish between categories of complaints;

27 (2) ensure that a complaint is not dismissed without

1 appropriate consideration;

2 (3) require that the board be advised of a complaint  
3 that is dismissed and that a letter be sent to the person who filed  
4 the complaint explaining the action taken on the dismissed  
5 complaint;

6 (4) ensure that the person who filed the complaint has  
7 an opportunity to explain the allegations made in the complaint;

8 (5) require that investigators used by the board be  
9 state employees; and

10 (6) establish procedures by which a board employee may  
11 dismiss a complaint if the investigation does not reveal a  
12 violation.

13 (7) Expired.

14 (d-1) Procedures established under Subsection (d)(6) must:

15 ~~(1) require a board employee to consult with a dentist~~  
16 ~~member of the board before dismissing a complaint relating to~~  
17 ~~patient morbidity, professional conduct, or quality of care;~~

18 (12) ensure that the decision to dismiss a complaint  
19 is made with the appropriate level of review and necessary  
20 expertise and experience; and

21 (23) require the dismissal of a complaint to be  
22 reported to the board at a public meeting of the board.

23 (d-2) Repealed by Acts 2005, 79th Leg., Ch. 810, Sec. 10,  
24 eff. September 1, 2005.

25 (e) The board shall:

26 (1) dispose of each complaint in a timely manner; and

27 (2) establish a schedule for conducting each phase of

1 a complaint that is under the control of the board.

2 SECTION 5. Subtitle D, Chapter 255, Occupations Code, is  
3 amended by adding Section 255.0065 to read as follows:

4 Section 255.0065 EXPERTS. (a) The board by rule shall provide  
5 for an expert dentist panel appointed by the board to assist with  
6 complaints and investigations relating to medical competency by  
7 acting as expert dentist reviewers. Each member of the expert  
8 dentist panel must be licensed to practice dentistry in this state.  
9 The rules adopted under this subsection must include provisions  
10 governing the composition of the panel, qualifications for  
11 membership on the panel, length of time a member may serve on the  
12 panel, grounds for removal from the panel, the avoidance of  
13 conflicts of interest, including situations in which the affected  
14 dentist and the panel member live or work in the same geographical  
15 area or are competitors, and the duties to be performed by the  
16 panel. The board's rules governing grounds for removal from the  
17 panel must include providing for the removal of a panel member who  
18 is repeatedly delinquent in reviewing complaints and in submitting  
19 reports to the board.

20 (b) If the initial review under 255.006(a) indicates that an  
21 act by a licensee falls below an acceptable standard of care, the  
22 complaint shall be reviewed by an expert panel authorized under (a)  
23 consisting of dentists who practice in the same specialty as the  
24 dentist who is the subject of the complaint or in another specialty  
25 that is similar to the dentist's specialty.

26 (c) The expert dentist panel shall report in writing the  
27 panel's determinations based on the review of the complaint under

1 Subsection (b). The report must specify the standard of care that  
2 applies to the facts that are the basis of the complaint and the  
3 clinical basis for the panel's determinations, including any  
4 reliance on peer-reviewed journals, studies, or reports.

5 (d) A dentist on the expert dentist panel authorized by  
6 Section 154.056(e) who is initially selected to review a complaint  
7 shall:

8 (1) determine whether the dentist who is the subject  
9 of the complaint has violated the standard of care applicable to the  
10 circumstances; and

11 (2) issue a preliminary written report of that  
12 determination.

13 (e) A second expert dentist reviewer shall review the first  
14 dentist's preliminary report and other information associated with  
15 the complaint. If the second expert dentist agrees with the first  
16 expert dentist, the first dentist shall issue a final written  
17 report on the matter.

18 (f) If the second expert dentist does not agree with the  
19 conclusions of the first expert dentist, a third expert dentist  
20 reviewer shall review the preliminary report and information and  
21 decide between the conclusions reached by the first two expert  
22 dentists. The final written report shall be issued by the third  
23 dentist or the dentist with whom the third dentist concurs.

24 (g) In reviewing a complaint, the expert dentist reviewers  
25 assigned to examine the complaint may consult and communicate with  
26 each other about the complaint in formulating their opinions and  
27 reports.

1 SECTION 6. Subtitle D, Chapter 263, Occupations Code, is  
2 amended by adding Section 263.0076 to read as follows:

3 Section 263.0076 INFORMAL SETTLEMENT CONFERENCE NOTICE.

4 (a) If an informal meeting will be held under 263.0075, notice of  
5 the time and place of the informal meeting must be given to the  
6 license holder not later than the 45th day before the date the  
7 informal meeting is held.

8 (b) The notice required by Subsection (a) must be  
9 accompanied by a written statement of the nature of the allegations  
10 against the license holder and the information the board intends to  
11 use at the informal meeting. If the board does not provide the  
12 statement or information when the notice is provided, the license  
13 holder may use that failure as grounds for rescheduling the  
14 informal meeting. The license holder must provide to the board the  
15 license holder's rebuttal not later than the 15th day before the  
16 date of the meeting in order for that information to be considered  
17 at the meeting.

18 (c) On request by a license holder under review, the board  
19 shall make a recording of the informal meeting. The recording is a  
20 part of the investigative file and may not be released to a third  
21 party unless authorized under this subtitle. The board may charge  
22 the license holder a fee to cover the cost of recording the meeting.  
23 The board shall provide a copy of the recording to the license  
24 holder on the license holder's request.

25 SECTION 7. Subtitle D, Chapter 263, Occupations Code, is  
26 amended by adding Section 263.0077 to read as follows:

27 Sec. 263.0077 REMEDIAL PLAN. (a) The board may issue and

1 establish the terms of a remedial plan to resolve the investigation  
2 of a complaint relating to this subtitle.

3 (b) A remedial plan may not contain a provision that:

4 (1) revokes, suspends, limits, or restricts a person's  
5 license or other authorization to practice dentistry; or

6 (2) assesses an administrative penalty against a  
7 person.

8 (c) A remedial plan may not be imposed to resolve a  
9 complaint:

10 (1) concerning:

11 (A) a patient death;

12 (B) the commission of a felony; or

13 (C) a matter in which the dentist engaged in  
14 inappropriate sexual behavior or contact with a patient or became  
15 financially or personally involved with a patient in an  
16 inappropriate manner; or

17 (2) in which the appropriate resolution may involve a  
18 restriction on the manner in which a license holder practices  
19 dentistry.

20 (d) The board may not issue a remedial plan to resolve a  
21 complaint against a license holder if the license holder has  
22 previously entered into a remedial plan with the board for the  
23 resolution of a different complaint relating to this subtitle.

24 (e) The board may assess a fee against a license holder  
25 participating in a remedial plan in an amount necessary to recover  
26 the costs of administering this plan.

27 (f) A remedial plan is public information.

1        (g) In civil litigation, a remedial plan is a settlement  
2 agreement under Rule 408, Texas Rules of Evidence.

3        (h) The board shall adopt rules necessary to implement this  
4 section.